THE LAW OF RACE AND REDISTRICTING

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Redistricting & Race

Race is always a part of the redistricting process.

Being race-conscious or aware of race during the redistricting process is part of the process.

United States v. Hays, 515 U.S. 737, 745 (1995), *Easley v. Cromartie*, 532 U.S. 234, 253-54 (2001) (quoting *Bush v. Vera*, 517 U.S. 952, 958 (1996))

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Compelling, legally acceptable reason for use of race in redistricting is compliance with the Constitution and Voting Rights Act: *Harris v Arizona Independent Redistricting Commission*, 136 S. Ct. 1301, 194 L. Ed. 2d 497 (2016).

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The Supreme Court has held that Constitution requires skeptical look at redistricting plans when race is the "predominant" reason for putting a significant number of people in or out of a district.

Fourteenth Amendment forbids use of race as predominant district boundary-drawing factor.

ALABAMA LEGISLATIVE BLACK CAUCUS ET AL. v. ALABAMA ET AL. (2015)

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"The key statistical analysis needed to comply with the Federal Voting Rights is to estimate the voting behavior of various racial and/or ethnic groups from aggregate election results to see if there is racially polarized voting."

- Dr. Jonathan Katz, Cal Tech

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Majority-minority districts required where:

"(1) the minority group [or minority coalition] is sufficiently large and geographically compact to comprise a majority in a single-member district; (2) political cohesiveness; (3) the white majority votes sufficiently as a bloc to enable it--in the absence of special circumstances ... usually to defeat the minority's preferred candidate."

Thornburg v. Gingles

Together, the second and third conditions are known generally as "**racially polarized**" voting.

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In practice, no racial predominance means that those drawing lines should avoid letting racial considerations "predominate," by considering other factors at the same time.

This is not difficult

There are many considerations that go into deciding where to draw a district line: residential clustering of groups of voters with common interests, locations of municipal boundaries or physical geographic features, or desire to keep district relatively close together.

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Prior to redistricting, 72.75% of District 26's population was black.

Accordingly, Alabama's plan added 15,785 new individuals, and only 36 of those newly added individuals were white.

ALABAMA LEGISLATIVE BLACK CAUCUS ET AL. v. ALABAMA ET AL. (2015)

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That Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State.

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"That Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State.

The record makes clear that both the District Court and the legislature relied heavily upon a mechanically numerical view …we agree with the United States … that the legislature must have a "strong basis in evidence" in support of the (race-based) choice that it has made."

ALABAMA LEGISLATIVE BLACK CAUCUS ET AL. v. ALABAMA ET AL. (2015)

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State must establish that it had "good reasons" to think that it would transgress the Act if it did not draw race-based district lines. That "strong basis" (or "good reasons") standard gives States "breathing room" to adopt reasonable compliance measures that may prove, in perfect hindsight, not to have been needed. Bethune–Hill, 580 U.S., at ——, 137 S.Ct., at 802

Cooper v. Harris, 137 S. Ct. 1455, 197 L.Ed.2d 837 (2017)

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Here, electoral history provided no evidence that a § 2 plaintiff could demonstrate the third Gingles prerequisite—effective white bloc-voting.

For most of the twenty years prior to the new plan's adoption, African–Americans had made up less than a majority of District 1's voters; the district's BVAP usually hovered between 46% and 48%.

Yet throughout those two decades, as the District Court noted, District 1 was "an extraordinarily safe district for African–American preferred candidates."

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Meaningful number of white voters joined a politically cohesive black community to elect that group's favored candidate. In the lingo of voting law, District 1 functioned, election year in and election year out, as a "crossover" district, in which members of the majority help a "large enough" minority to elect its candidate of choice.

Cooper v. Harris, 137 S. Ct. 1455, 197 L.Ed.2d 837 (2017)

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To have a strong basis in evidence to conclude that § 2 demands race-based steps, the State must carefully evaluate whether a plaintiff could establish the Gingles preconditions—including effective white bloc voting—in a new district created without those measures.

We see nothing in the legislative record that fits that description.

North Carolina's belief that it was compelled to redraw District 1 (a successful crossover district) as a majority-minority district rested not on a "strong basis in evidence," but instead on a pure error of law.

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